IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7110 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THAKARSHI JASMAT SAVALIA & 2 - Petitioner(s)

Versus

ADDITIONAL CHIEF SECRETARY & 1 - Respondent(s)

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Appearance :

MR PJ KANABAR for Petitioner(s) : 1 - 3.
MR PRADIP BHATE ASST GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2,
MR YN RAVANI for Respondent(s) : 2.2.1, 2.2.2, 2.2.3, 2.2.4, 2.2.5, 2.2.6,2.2.7

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 01/09/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioners have

challenged the legality and validity of the judgment and order passed by the Deputy Secretary (Appeals), Revenue Department, State of Gujarat dated 17.10.1995 passed in Revision Application No.SRD-8 of 1993 allowing the same and quashing and setting aside the order passed by the Collector, Amreli with respect to the Revenue Entry No.984 with regard to the land bearing Survey No.228.

2. One Nanalal Kalidas was the owner of the land Survey No.228 and the father of the petitioners Nos.1 & 2 and husband of the petitioner No.3, deceased – Jasmat Mulji purchased the said land from the said Nanalal Kalidas vide registered sale deed dated 20.12.1961 admeasuring Acres 7 – 26 Gunthas. Vide entry No.984 dated 30.9.1992 Mamlatdar mutated his name in the record of rights. The said entry No.984 dated 30.9.1992 came to be challenged by the original respondent No.2 by filing appeal before the Assistant Collector, Rajula being Appeal No.9 of 1993. The Assistant Collector by its judgment and order dated 12.4.1993 alloted the said appeal by setting aside

the order of Mamlatdar dated 30.9.1992. Being aggrieved and dissatisfied with the order passed by the Assistant Collector, Rajula, the petitioners preferred Revision Application before the Collector, Amreli being Appeal No.22 of 1993 and Collector, Amreli allowed the said appeal vide judgment and order dated 28.9.1993 passed in Appeal No.23 of 1993 – original respondent No.2 preferred the Revision Application No.8 of 1993 before the Deputy Secretary, Revenue Department, State of Gujarat who by its judgment and order dated 17th Sept. / October, 1995 allowed the said revision application and set aside the order passed by the Collector, Amreli dated 28.9.1993 passed in Appeal No.23 of 1993 and consequently, set aside the Entry No.984. Being aggrieved and dissatisfied with the judgment and order passed by the Deputy Secretary (Appeals), Revenue Department, State of Gujarat dated 17.10.95 passed in Revision Application No.8 of 1993, the petitioners have preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. Shri P.J.Kanabar, learned advocate appearing on behalf of the petitioners has vehemently submitted that the Deputy Secretary (Appeals), Revenue Department, State of Gujarat has materially erred in disturbing the order passed by the Collector, Amreli and consequently, quashed and set aside the entry No.984 which was mutated on the basis of the registered sale deed entered into between the original land owner and the father of the petitioner Nos.1 & 2. It is also further submitted by him that the revenue authorities have no jurisdiction to decide the disputed question of title between the parties and considering the provisions of the Bombay Land Revenue Code and the Rules, the revenue authority is bound to give effect to the registered sale deed in the revenue record and if there is any dispute between the parties, the parties are required to be relegated to approach the civil court and in the present case, Civil Suit is already pending between the parties and therefore, it is requested to

allow the present Special Civil Application.

3. Per contra, Shri Y.N.Ravani, learned advocate appearing on behalf of the original respondent No.2 and now heirs of the original respondent No.2 as well as Shri Pradip Bhate, learned AGP have tried to support the judgment and order passed by the Deputy Secretary (Appeals), Revenue Department, State of Gujarat passed in Revision Application No.8 of 1993. Shri Ravani, learned advocate has submitted that in view of the fact that on death of Nanalal Kalidas, names of heirs of said Nanalal Kalidas were mutated in the revenue record and only thereafter, the name of the subsequent purchaser can be mutated and therefore, the Deputy Secretary has rightly passed the order to mutate the names of the heirs of the said Nanalal Kalidas and has rightly passed the order that he necessary entry will be mutated on the basis of the judgment and decree that may be passed by the learned Civil Judge (JD), Ghari. Therefore, it is requested to dismiss the present Special Civil

Application.

4. It is not in dispute that the father of the petitioner No.1 & 2 and husband of the petitioner No.3 – Jasmat Mulji had purchased the land in question by registered sale deed dated 20.12.1961 from the original land owner Nanalal Kalidas. Therefore, the name of said Jasmat Mulji and on his death name of the petitioners are required to be mutated in the revenue record. As held by the Hon'ble Supreme Court as well as this Court in catena of decisions, the revenue authority has no jurisdiction to decide the disputed question of title and / or legality and validity of the sale deed. In case there is dispute between the parties with regard to title, the parties are required to be relegated to civil court and it appears that the civil suit is already pending between the parties. It is also required to be noted that even the Deputy Secretary (Appeals), also vide its impugned judgment and order has also passed the order that necessary entry will be made on the basis of the judgment and decree that

may be passed by the Civil Court. However, the question which is required to be considered is whether in the mean time Entry No.984 is required to be set aside or not. As stated hereinabove, said Jasmat Mulji father of the petitioner Nos.1 & 2 and the husband of the petitioner No.3 had purchased the aforesaid lands by registered sale deed. Under the circumstances, considering the provisions of the Bombay Land Revenue Code as well as rules necessary entry is required to be mutated in the revenue record with regard to the said sale deed and necessary entry can be modified and fresh entry can be made on the basis of the judgment and decree that may be passed by the competent civil court in the pending proceedings. As held by the Hon'ble Supreme Court and this Court in catena of decisions, entry in the revenue record does not confer any right, title or interest and it is only for fiscal purpose only for collection of revenue and showing prima facie possession. Under the circumstances, the Deputy Secretary (Appeals), Revenue Department, State of Gujarat has materially erred in quashing and setting

aside the order passed by the Collector, Amreli restoring Entry No.984. The Deputy Secretary (Appeals), Revenue Department has materially erred in consequently quashing and setting aside the Entry No.984 which came to be mutated on the basis of the registered sale deed entered into between the parties. Under the circumstances, the judgment and order passed by the Deputy Secretary (Appeals), Revenue Department, State of Gujarat dated 17.9/10.1995 passed in Revision Application No.SRD/8 of 1993 in so far as quashing and setting aside the order passed by the Collector, Amreli (restoring Entry No.984) is required to be quashed and set aside and Entry No.984) is required to be restored and rest of the order passed by the Deputy Secretary (Appeals) to the effect that necessary entry will be made on the basis of judgment and decree that may be passed by the Civil Court, is confirmed and upheld.

5. For the reasons stated above, the petition succeed. The judgment and order passed by the Deputy Secretary (Appeals), Revenue Department, State of

Gujarat dated 17.9/10.1995 passed in Revision Application No.SRD/8 of 1993 is hereby quashed and set aside to an extent of restoring the Entry No.984 with respect of the land in question and it is ordered that a necessary entry will be made on the basis of the judgment and decree that may be passed by the competent civil court and the aforesaid entry No.984 would be subject to the ultimate outcome of the judgment and decree that may be passed by the Civil Court.

6. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R.Shah, J.]

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